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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,527	06/09/2006	James Lee Gardiner	6002-1096	1056
466 7590 08/24/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER VOLZ, ELIZABETH J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 08/24/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/582,527

**Applicant(s)**

GARDINER, JAMES LEE

**Examiner**

ELIZABETH VOLZ

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 6/9/06, 10/10/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Objections***

1. Claim 33 is objected to because of the following informalities: At the end of Line 5 there are two periods and there should only be one. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 41-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. If "the post" is not chosen in Claim 40, it no longer exists for claims 41-47. Therefore, Claims 41-47 cannot be examined.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

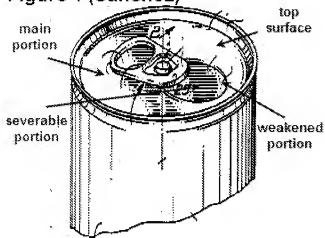
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 27-40 and 50-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanchez (U.S. Patent No. 4,681,238).
6. Regarding Claims 27 and 28, Sanchez discloses a cap 15/17 (Figure 1) for a beverage container 11 (Figure 8) having a hollow body member 13 (Figure 2) with opposed ends, a bottom member at one end (Column 4, Line 47) thereof and the cap is

for fixing to the other end thereof, the cap comprising a panel member 17 (Figure 1) arranged for fixing to the body member at said other end and configured to extend over said other end when fixed to said other end, the panel member having a main portion (Figure 1 below) and a partially or fully severable portion (Figure 1 below) arranged for a user of the container to apply a pressure on said severable portion for severing same and thereby forming a dispensing aperture in a zone defined by the severed portion, the applied pressure further causing the severed portion to move into the container (Figure 3), and a closure member 49 (Figure 12) arranged, when the panel member is fixed to said other end, to be within the container and the closure member is movable relative to the panel member between a closed position for closing a beverage passage through said dispensing aperture and an open position for dispensing the beverage through the dispensing aperture (Figure 8), the closure member having a handle 19 (Figure 3) and being arranged to engage the severed portion while moving into the container to thereby be caused to move to a position where the handle extends through the dispensing aperture following forming thereof, the handle being configured for the user to manually move the closure member in a first direction towards the closed position and in a second direction towards the open position to reveal the passage for dispensing the beverage therein.

**Figure 1 (Sanchez)**



7. Regarding Claim 29, Sanchez discloses a panel member 17 (Figure 1) which is fixed to the body member at said other end by a seaming process (Figure 2).
8. Regarding Claim 30, Sanchez discloses a panel member 17 (Figure 1) which has a weakened section from which a perimeter of the severable portion can be severed from the main portion by applying pressure to the severable portion (Figure 3).
9. Regarding Claim 31, Sanchez discloses a weakened section (Figure 1 above) which is configured to extend fully or partly around the severable portion.
10. Regarding Claim 32, Sanchez discloses a weakened section (Figure 1 above) which extends fully around the severable portion, and the severed portion can thus be separated from main portion (Figure 2).
11. Regarding Claim 33, Sanchez discloses a weakened section (Figure 1 above) which is configured to extend partly around the severable portion so that the severed portion remains connected to the main portion and is pressed to move towards one side of the dispensing aperture (Figure 4).

12. Regarding Claim 34, Sanchez discloses a weakened section (Figure 1 above) formed by a score line (Column 4, Lines 54-62).
13. Regarding Claim 35, Sanchez discloses a cap 15/17 (Figure 1) having an opener 19 (Figure 1) arranged for the user to manually move the opener to apply said pressure on the severable portion (Column 4, Lines 54-62).
14. Regarding Claim 36, Sanchez discloses an opener 19 (Figure 1) which is in the form of a pull tab 19 (Figure 2) pivotally mounted to the main portion, and having an inner end 25 (Figure 1) lying over the severable portion and an outer end 21 (Figure 1), the outer end being movable upwardly to pivot the inner end to move downwardly to apply pressure to the severable portion for severing same.
15. Regarding Claim 37, Sanchez discloses a main portion (Figure 1 above) having a top surface (Figure 1 above) and a first rivet 27 (Figure 1) with an upper end 15 (Figure 1) extending from its top surface, and the pull tab is pivotally mounted on the first rivet and arranged above the top surface (Figure 1).
16. Regarding Claim 38, Sanchez discloses a panel member 17 (Figure 1) having an under surface and the closure member is arranged on or beneath the under surface (Figure 4).
17. Regarding Claim 39, Sanchez discloses a closure member 49 (Figure 12) being arranged to be rotatably movable relative to the panel member (Figures 11 and 12).
18. Regarding Claim 40, Sanchez discloses a closure member 49 (Figure 12) which is in the form of a disk rotatably mounted on a rivet fixed to the main portion (Figure 12).

19. Regarding Claim 50, Sanchez discloses a sealing member 88 (Figure 12) which is applied to the closure member or to the main portion surrounding the dispensing aperture to substantially seal the aperture when the closure member is in the closed position. (Figure 12)
20. Regarding Claim 51, Sanchez discloses a severable portion (Figure 1 above) which is arranged to remain connected to the main portion when severed and is foldable in a downward direction (Figure 4), the main portion having a further sealing member 45 (Figure 2) applied to seal a gap between the main portion and the severed and folded portion.
21. Regarding Claim 52, Sanchez discloses a closure member 49 (Figure 12) having an engagement projection 59 (Figure 3) arranged to engage the severed portion of the panel member and an inward movement of the severed portion causes the closure member to move to a position where the handle extends through the dispensing aperture (Figure 3).

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanchez (U.S. Patent No. 4,681,238) in view of Louie (U.S. Patent No. 6,290,084).

24. Regarding Claims 48 and 49, Sanchez teaches all the limitations substantially as claimed except for a disk, circular in shape, which has a closed section and a through hole section, and the disk is arranged so that in the open position the through hole section is in line with the dispensing aperture and at the closed position the closed section closing said beverage passage. However, Louie teaches a disk 21 (Figure 14), circular in shape (Figure 14), which has a closed section 20 (Figure 9) and a through hole section 66 (Figure 13), and the disk is arranged so that in the open position (Figure 12) the through hole section is in line with the dispensing aperture (Figure 12) and at the closed position the closed section closing said beverage passage (Figure 13).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Sanchez to include a disk circular in shape which has a closed section and a through hole section, and the disk is arranged so that in the open position the through hole section is in line with the dispensing aperture and at the closed position the closed section closing said beverage passage, as taught by Louie, in order to provide a larger closure member and to provide a better connection of the disk to the container.

25. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the



requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. V./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781